

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA § CRIMINAL CASE NO.
 §
 §
v. § 1:16-cr-00237-AT-JSA
 §
 §
JAMES G. MALONEY, §
 §
 §
Defendant. §

**MOTION TO STRIKE GOVERNMENT'S SURREPLY BRIEF
IN SUPPORT OF ITS CIPA § 6 MOTION**

COMES NOW, James G. Maloney, Defendant herein, by and through the undersigned counsel, and files this Motion to Strike Government's Surreply Brief in Support of its CIPA § 6 Motion, filed on March 5, 2019, *see* Doc. # 92.

The Court directed the Government to file a brief responding to Defendant's Proffer Regarding Testimony & Evidence by January 25, 2019, and for Defendant to file a reply brief by February 7, 2019. *See* Doc. # 87. The defense has received notice that the Government, yesterday, filed a document entitled "Government's Surreply Brief in Support of its CIPA § 6 Motion" (hereinafter "Surreply"). *See* Doc. # 92.

“Where... the local rules do not provide for surrebuttal briefs... the requirements of Fed.R.Civ.P. 6(b) also apply to the court’s decision as to whether to grant a non-movant leave to file a surrebuttal brief.” *Clinkscales v. Chevron U.S.A., Inc.*, 831 F.2d 1565, 1568 (11th Cir. 1987). “[T]he district court may in its discretion allow a surrebuttal brief where the non-movant’s failure to fully respond to the motion in its original response was due to excusable neglect.” *Id.*

The Court has recognized in other cases that “[n]either the Federal Rules of Civil Procedure nor this Court’s Local Rules authorize the filing of surreplies.” *Fedrick v. Mercedes-Benz USA, LLC*, 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005) (Order) (citing *Byrom v. Delta Family Care—Disability and Survivorship Plan*, 343 F.Supp.2d 1163, 1188 (N.D.Ga. 2004)). “Such filings will typically be accepted by the Court only in unusual circumstances, such as where a movant raises new arguments or facts in a reply brief, or where a party wishes to inform the Court of a new decision or rule implicating the motion under review.”” *Henley v. Turner Broad. Sys., Inc.*, 267 F. Supp. 3d 1341, 1349 (N.D. Ga. 2017) (Opinion and Order) (quoting *Roelle v. Cobb Cty. Sch. Dist.*, No. 1:13-cv-3045, 2014 WL 4457235, at *9 (N.D. Ga. Sept. 10, 2014)).

Here, the Government has not moved for leave to file any surreply prior to filing its Surreply. The Government has made no showing that unusual

circumstances require the filing of any surreply. Counsel for Dr. Maloney has conferred with counsel for the Government prior to filing this motion, and counsel for the Government has informed counsel for Dr. Maloney that counsel was unaware of any rule permitting the filing of a surreply.

In view of the Government's failure to obtain leave of the Court to file a surreply prior to filing its Surreply, and the Government's failure to set forth the grounds on which leave to file any surreply might be warranted, Defendant requests that the Government's Surreply be stricken and that the Surreply not be considered by the Court.

WHEREFORE, for the reasons set forth herein, Defendant James G. Maloney respectfully requests that the Court grant his Motion to Strike Government's Surreply Brief in Support of its CIPA § 6 Motion, filed on March 5, 2019, *see* Doc. # 92, and strike the Government's Surreply Brief in Support of its CIPA § 6 Motion, filed on March 5, 2019.

Respectfully submitted, this 6th day of March, 2019.

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/s/Craig A. Gillen

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CERTIFICATION

The undersigned certifies, pursuant to N.D.Ga.L.Civ.R. 7.1D, that the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in N.D.Ga.L.Civ.R. 5.1B.

GILLEN WITHERS & LAKE, LLC

/s/Craig A. Gillen

Craig A. Gillen, Esq.
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Counsel for Dr. James G. Maloney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 6th day of March, 2019, the undersigned served the foregoing document by filing the document via the Court's Case Management/Electronic Case Filing (CM/ECF) system, which will automatically serve notice of such filing on the following attorneys of record:

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